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the Treaty, the instrument of ratification might be executed without containing any reference to the condition, and upon the fulfillment of the condition might be deposited at Paris.

"Another possibility which may be noticed is that the Senate resolution might contain *recitals*, as did the resolution with Japan of 1911. Such recitals are not strictly conditions at all, and consequently may be omitted, as in the case mentioned they were omitted, from the instrument of ratification.

"Recitals of such a character, even if declaratory in their nature, would not, by means of our instrument of ratification, be formally communicated to the other Parties signatory to the Treaty, but, as a matter of fact, they would control our policy in the future and as they would in reality be known to all the other Powers they would have the same result in the future as if formally communicated.

"The precise form, therefore, of the resolution adopted by the Senate regarding the ratification of the Treaty of Peace with Germany is of the utmost importance. If the resolution is drafted so as to require fresh negotiations, delays and difficulties will inevitably result. If, on the other hand, proper attention is given to form, the substantial result reached by reservations of an interpretative character can be obtained without involving the postponement of the formal state of Peace."

In the case cited of Japan, 1911, the Japanese government formally expressed its concurrence in the Protocol of Exchange (page 63). The reservation thus appears to have been formally communicated and noted. What importance, then, attaches to the author's statement that recitals "would not, by means of our instrument of ratification, be formally communicated to the other Parties"? The truth is that in accordance with previous practice they would have to be not only communicated in some way but also accepted, or, if either not communicated or not accepted, would be misleading, and possibly not honorable. For, though not communicated, they might nevertheless control our policy in the future. The other party, suffering from the terms of the treaty, would not be heard to contend in an American court, that there was no treaty in force, but would be told that the reservation was legally of no account; on the other hand, the government of the United States would as a matter of fact have the benefit of any reservations of a *political* character to which the other party had not assented; for these reservations by their very nature could never become matter of judicial cognizance, and would naturally control the diplomatic action of the government. In a treaty which would be the basis of pecuniary claims running into many millions, all the benefits would go to the United States, which at its option would escape burdens of a political nature.

Mr. Miller's exposition seems to have been printed without a responsible publisher. It makes very difficult reading, — no orderly arrangement, nothing to distinguish text from comment, no headings, no index — a poor piece of bookmaking. The value of the material is seriously impaired by this defect.

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INTERNATIONAL LAW. By Sir Frederick Smith. Fifth edition, revised and enlarged by Coleman Phillipson. New York: E. P. Dutton & Company. 1918. pp. 456.

As the author's preface says, this book "began its existence as a volume in Dent's Primer Series in 1899." The author was admitted to the bar in that year. When the present edition was prepared, he was Attorney General of Great Britain. He is now Lord Chancellor, with the title of Baron Birkenhead. As he has long been too busy to rewrite his book, the fifth edition, like the

fourth, has been largely the work of an editor. The fifth edition is three times the size of the first. The author's share in the latest changes has been, in the words of the preface, "mainly consultative."

Even as thus enlarged the book does not compete in size with the work of Wheaton the American, or of Bonfils the Frenchman, nor with the British Westlake or Hall or Oppenheim. Nevertheless, for reasons to be explained, it fills a temporary need, and it may also be found to have permanent interest of a peculiar sort.

The title to permanent interest lies, paradoxically enough, in the offices temporarily filled by the author. The Attorney General of Great Britain is a high executive official of the British Government. The Lord Chancellor is a still higher executive official; for, odd as it seems to Americans, he is both a judge and a member of a partisan cabinet. Hence the possibility that both now and hereafter some one may consider it worth while to ascertain whether expressions in this edition are attributable to the author or to one of the successive editors, to the end that by the higher criticism it may be learned what are the views of a member of the British Government at this important time.

In the preface, dated September 18, 1918, the author, then Attorney General, says: "For the correction of specific infamies International Law does not exclude the castigation of guilty individuals, however highly placed. Material injuries may be made good by the payment of pecuniary indemnity. And if it be objected that an impoverished nation has no money wherewith to make good the consequences of its crimes, it may be answered that the claims of a guilty nation to be repaid interest on the money it supplied, for the purpose of those crimes, may be justly postponed to the complaints of the victims. . . . The ordinary assumption that the Central Powers will be represented, in the sense that the Allies are, at the Peace Conference would seem to require very considerable qualification. They should be present in the later scenes to hear, but not to contribute to, the discussions of the Allies. . . . I wholly misread the temper and the minds of my countrymen if they are not implacably resolved that the guilty shall pay for their crimes to the uttermost ounce in their bodies and in their purses. And the doctrines of International Law afford abundant warrant and precedent for both these demands."

Those extracts from the preface make such an accurate prophecy that they increase the reader's interest in such other parts of the book as seem to throw light on British sentiment. A few of those parts will be mentioned, and as to each of them the question must be asked whether the text does express the attitude of the official class.

One of the interesting passages is the comparison of British treatment of Denmark in 1807 with German treatment of Belgium in 1914; for the words of the book are that "it can hardly be said, however, that a state would never be justified in violating the sovereignty of another state, unless that other had actually done, or threatened to do, it harm," and also that "it is surely better to admit that there may be circumstances in which, in self-defense, a state is entitled to violate the sovereignty of another, even though that other is in no way at fault," and then the distinction emphasized between the Danish and Belgian cases is merely that in the latter instance "the plea of military necessity and self-preservation is not tenable, when the act had long been planned beforehand and formed part of a programme" (pp. 89–92).

Other interesting passages discuss the Declaration of London of 1909 and the partial acceptance and partial abrogation of its provisions by some belligerents on each side in the World War; and, though it is stated that, as the provisions "were the result in many cases of a compromise, concessions by one nation being conditional on concessions made by others, it was agreed that they must be ratified, if at all, as a whole," and it is also stated that they have not been "ratified by the powers concerned," nevertheless the book appears to

approve partial acceptance and partial abrogation, a practice against which the United States made in October, 1914, protests not mentioned (pp. 330–333, 360, 393).

Passing from matters of interest to citizens of all countries, it becomes necessary to call attention to three topics upon which it has been supposed that British and American opinions have at last reached harmony, namely, Major André, the Monroe Doctrine, and the special message of President Cleveland, December 17, 1895, regarding the Venezuelan boundary dispute. Of Major André's case the book says, not to mention less important errors, that "he was not seeking information" (p. 231); but, if it be important to distinguish between seeking and finding, the book should have added that he found information and in disguise was carrying back to the British concealed papers which contained intelligence for the enemy. (Major André's Case, 2 Chandler's Criminal Trials, 155, 162, 164, 165, 168, 169, 171.) Of the Monroe Doctrine the book says — and again it seems unnecessary to point out all defects — that the doctrine arose out of a suggestion by Canning in 1823, and that in 1824 Canning so acted that "the English view was unequivocally placed on record that Great Britain considered the whole of the unoccupied parts of America as being open to *her* future settlements in like manner as heretofore" (pp. 94–95); and it does not mention that the Canning suggestion of 1823 said of the Spanish American colonies "*we* aim not at the possession of any portion of them ourselves" (6 MOORE'S DIGEST OF INTERNATIONAL LAW, 389), though it does narrate that President Monroe — taking the British Foreign Secretary at his word, so to speak, — caused the doctrine to include the provision that "the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects of colonization by *any* European powers;" and it does not appreciate that a comparison of the words herein italicized creates wonder whether the author intends to suggest that the British Foreign Secretary attempted to deceive the President. Finally, as to the Venezuelan boundary dispute the book must appear to any American both inadequate and misleading; and it seems enough to specify that though, to be sure, it does not quote Lord Salisbury's instructions to the effect that Her Majesty's Government cannot "admit that the interests of the United States are necessarily concerned in every frontier dispute which may arise between any two of the States who possess dominion in the Western Hemisphere," and still less can "accept the doctrine that the United States are entitled to claim that the process of arbitration shall be applied to any demand for the surrender of territory which one of those States may make against another" (6 MOORE'S DIGEST OF INTERNATIONAL LAW, 564), nevertheless the book clearly takes that old British view and also fails to appreciate that the arbitration which occurred was an acquiescence in the position taken by the United States (pp. 95–97).

In short, considered as a possible side light on the minds of the British official class, this book is disquieting. Hence the statement at the outset that this edition may be found to have permanent interest of a peculiar sort.

It was also said, as may be recalled, that this edition fills a temporary need. It is indeed pleasant to be able to specify that in the notes are cited as many as one hundred and forty of the cases decided in British courts during the World War. As a rule neither those cases nor the earlier ones are discussed in the text. Some are discussed, however, and in a way that is enlightening. For example, *The Zamora*, [1916] 2 A. C. 77, is chiefly presented not as illustrating a doctrine of International Law but as illustrating a doctrine of Constitutional Law, the text carefully quoting from the opinion of the Judicial Committee of the Privy Council these essential passages: "It cannot, of course, be disputed that a Prize Court, like any other court, is bound by the legislative enactments of its own sovereign state. . . . The fact, however, that the Prize

Courts in this country would be bound by Acts of the Imperial Legislature affords no ground for arguing that they are bound by the Executive Orders of the King in Council" (pp. 50–51, 192). As this edition is the earliest book to give these recent citations and these discussions, however short, of the more important recent decisions, it is clearly of at least temporary use both to the student and to the practitioner.

It is perhaps proper to add that the tone of the book is not intended to give offense to Americans. Surely no one was angered by the statement in the first edition, the primer of 1899 (p. 52), that "the lawyer is not concerned with the wild speech of President Grant in 1870: 'he hoped that the time was not far distant when in the natural course of events the European connection with the continent would cease'"; and now that passage is mellowed thus: "with some of the extravagant utterances of President Grant in favor of a cessation of relationships between Europe and America — a consummation impossible of achievement — we are not here concerned" (p. 94). Again, the treatment of *The Trent* episode of 1861 is not unfriendly; and an attractive olive-branch is found in the statement retained from the youthful primer that "Mr. Seward, however, in a long dispatch which illustrates very happily the inconveniences to which a politician exposes himself who gets up his international law for the occasion, maintained that the seizure was in other respects good, and that Messrs. Mason and Slidell were a species of contraband" (p. 405).

E. W.

THE CORPORATION AS A LEGAL ENTITY. By James Treat Carter. Baltimore: M. Curlander. 1919. pp. 234.

This is a study growing out of an essay originally presented as a thesis at the Law School of the University of Maryland, subsequently "broadened to embrace the philosophical and legal aspects of the corporate entity." Part I contains, *inter alia*, chapters on "Theories and Concepts of the Corporation," "The Corporate Entity as Citizen and Person," and "The Extent to which the Courts Disregard the Corporate Entity." Part II is devoted to Maryland laws and decisions.

The work evidences much reading, and largely consists of extracts from decisions and treatises, with running comment.

The main thought of the author is that a corporation is not a fiction but a reality. But he nowhere defines, with satisfying clearness, what he means by a corporation, or what he means by reality. On page 13 he says: "From all these various definitions, it may be said at least that a corporation is an association of individuals acting as a unit, and exercising rights and powers designated by an Act of the State." But at page 223 he says that a one-man corporation introduces "no really new problems into the law of corporations." And in pages 130 to 131 he says that "it seems inevitable that the denial of citizenship to corporations within the meaning of the Comity Clause and the Fourteenth Amendment will be abandoned at some time in the future. . . . It is true that not everything which a state could see fit to call a corporation must be deemed a citizen. There must be the human substratum." Thus three possibilities are opened, — first, a corporation consisting of two or more human beings; second, a corporation consisting of one human being; third, a corporation without "human substratum." Does the author mean that all three sorts of corporations are realities?

The word "corporation" seems to have been usually used at the common law as a term broad enough to include any legal unit not a human being. Such a legal unit was usually predicated upon an association of human beings, but was not necessarily so predicated, — sometimes, for example, it was predicated upon an office.